

EXHIBIT K

██████ - People - Direct

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number five from the lineup?

THE COURT: Before you go on to that, when you say you picked out number five, the shade went up. You looked and then did you say something to the police officers?

THE WITNESS: I just looked.

Q Did you tell them it is number five?

A No, not right away. I looked carefully.

Q You looked carefully and then what happened?

A I said it was number five but then I asked the officer to ask them to say out a sentence that the guy said to me.

Q First you told them it was number five and you wanted them to ask the men to say, repeat a sentence?

A Yes.

Q And then what happened after you asked the officer to have the person in the lineup repeat a sentence?

A Excuse me. I didn't understand.

Q You told the officers it is number five but I would like them to repeat a sentence; is that correct?

A Yes.

Q And then what happened after that?

A Then they said the sentence all of them.

Q Each one said the sentence?

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1
2 A Yes.

3 Q While you were looking at them?

4 A Yes.

5 Q Were they still seated?

6 A No, they came up to the window.

7 Q Each one came up to the window eventually?

8 A Yes.

9 Q And repeated the sentence?

10 A Yes.

11 Q First number one, then number two, number three,
12 four, five?

13 A Yes.

14 Q Six?

15 A Yes.

16 Q And then after each one repeated the sentence
17 that person went back and sat down?

18 A Yes.

19 Q The next one came up?

20 A Yes.

21 Q What if anything happened after all six men repeated
22 that sentence, if anything?

23 A I couldn't hear the voice of number five clearly
24 and I asked her if he could say it louder so I could hear.

25 Q Then what happened after that?

1 [REDACTED] - People - Direct

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2 A After the last one said it I said, "I'm positive
3 it is him."

4 Q All six men repeated the sentence?

5 A No not all of them didn't repeat.

6 Q All of them initially came up and said the sentence,
7 all six came up?

8 A Yes.

9 Q Then you told the officer you couldn't hear
10 number five; is that correct?

11 A Yes.

12 Q And then what happened? Did number five come
13 up again?

14 A No, he just said it louder.

15 Q From where he was seated?

16 A No at the window.

17 Q When number five came up?

18 A He seem like he was lowering his voice.

19 Q You asked -- he repeated, did he repeat it right
20 away before number six went or after number six went?

21 A After number six.

22 Q Number five was seated when number six said
23 it and number five came back to the window?

24 A He said it again.

25 Q What happened after that?

1 [REDACTED] - People - Direct

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2 A I told her I said, "I'm positive it is number
3 five."

4 Q Miss [REDACTED] do you see the person that raped
5 you in the courtroom today?

6 A Yes, I do.

7 Q Can you please indicate that person for the
8 Court?

9 A Sitting right there (indicating).

10 THE COURT: Indicating the defendant.

11 Miss [REDACTED] at the time of the lineup
12 did there come a time when you were taken outside
13 of the viewing room and the men came up to the
14 door and repeated that sentence?

15 THE WITNESS: No. I wasn't taken out of
16 the room until after the lineup.

17 THE COURT: In other words whatever occurred
18 while you were in the viewing room and the other
19 six men were you in the lineup room?

20 THE WITNESS: Yes.

21 THE COURT: And there never was a time
22 when you were taken out of the viewing room
23 to stand in a hallway to listen to the six men
24 repeat that sentence through a door?

25 THE WITNESS: No.

1 [REDACTED] - People - Direct

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2 Q Miss [REDACTED] I will ask you a few more questions
3 about the lineup.

4 You said that you picked a number, number five?

5 A Yes.

6 Q After you picked number five is that when each
7 of the men repeated this sentence?

8 A Excuse me?

9 Q Okay. After you selected number five from the
10 lineup is that when you asked the detective to have them
11 say this sentence?

12 A (No response.)

13 Q All right.

14 THE COURT: Go back. You looked in through
15 the window. You told the detective it was number
16 five, but you wanted them to repeat the sentence;
17 is that correct?

18 THE WITNESS: Yes.

19 THE COURT: They each, each man came up
20 to the window and repeated the sentence. Then
21 you told the detective you didn't hear number
22 five. So number five came back up to the window
23 and said it again; is that correct?

24 THE WITNESS: I'm getting confused.

25 THE COURT: Don't get confused. Let's

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start again.

When you got to the lineup room, first time they put you up on something so you could see through the window?

THE WITNESS: Yes.

THE COURT: The window shade went up where you looked and saw it. You saw six men seated; is that correct?

THE WITNESS: Yes.

THE COURT: Then you say you told the officer you recognized number five?

THE WITNESS: Yes.

THE COURT: And then you asked the officer to have each one of them repeat a sentence; is that correct?

THE WITNESS: Uh-huh.

THE COURT: Number one came up to the window and repeated and said that sentence?

THE WITNESS: Yes.

THE COURT: Then went back and sat down?

THE WITNESS: Yes.

THE COURT: Number two came up. All six came up and went back?

THE WITNESS: Yes.

1 [REDACTED] - People - Direct

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2 THE COURT: And then you told the officer that
3 you couldn't hear number five?

4 THE WITNESS: No -- yes, I did tell the officer
5 that because he lowered his voice.

6 THE COURT: So number five came back to the window
7 and repeated the sentence?

8 THE WITNESS: Yes.

9 THE COURT: And then you told the officer
10 you were sure it was number five?

11 THE WITNESS: Yes.

12 CONTINUED DIRECT EXAMINATION

13 BY MS. FREUND:

14 Q Miss [REDACTED], do you remember this man repeating
15 this sentence while they were seated, while they were all
16 seated?

17 A I don't remember.

18 Q Miss [REDACTED] what if anything did you hear after
19 you were taken from the viewing room?

20 MR. SEGAL: Objection to the form.

21 THE COURT: If anything.

22 Q What if anything, if anything did you hear after
23 you were taken from the viewing room?

24 A Yes, I did hear something.

25 THE COURT: What did you hear.

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Q What did you hear?

A I heard the voice of a man.

Q And where were you when you heard the voice of the man?

A I was back in the detective's office.

THE COURT: Did the detectives say anything to you after you identified number five as the one who assaulted you?

THE WITNESS: No, they didn't.

THE COURT: They asked you if you were sure?

THE WITNESS: They asked me that before I left the room. They said, "Are you sure."

THE COURT: Did they ask you that after the voice identification or after the first identification?

THE WITNESS: After the voice.

THE COURT: Voice identification?

THE WITNESS: Yes.

THE COURT: You told them twice, told them number five but I want to hear him say the same sentence and after you heard the sentence you said, yes, I'm sure it is number five.

THE WITNESS: Yes.

THE COURT: And then you heard while you

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2 heard while you were sitting in the detective's
3 office you heard tht voice again?

4 THE WITNESS: Yes.

5 THE COURT: Did you say anything to the officers
6 at that time?

7 THE WITNESS: No, I didn't.

8 Q Miss [REDACTED] I will ask you to remember back to
9 that Saturday morning, June 23rd, 1984. When was the first
10 time that you saw the face of the man that raped you?

11 A I was in the grocery store.

12 Q What were you doing in the grocery store?

13 A Me and a lady that runs the grocery store at night
14 we knew each other because I had worked across the street
15 from the grocery store and we knew each other and we were
16 just talking.

17 THE COURT: What was her name?

18 THE WITNESS: I didn't know her by name,
19 only through each other, by face.

20 Q Did you make a purchase in that store?

21 A Yes, I did.

22 Q What did you purchase?

23 A I purchased the can of beer.

24 Q And where did you see the face of the man that
25 raped you in that store?

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a minute, two minutes, five minutes, ten minutes anything like that?

A I don't know, I wasn't counting.

Q Okay, and what do you say? Do you say anything to the police after the shade goes up after a minutes, whatever, no matter, it takes sometime, you see something. What do the police say anything to you or do you say anything to the police?

MS. FREUND: Objection to the form.

THE COURT: Do you understand the question?

THE WITNESS: No.

THE COURT: The shade went up. You looked through the window; right?

THE WITNESS: Uh-huh.

THE COURT: Next time anybody spoke was that you or the officer?

THE WITNESS: It was me.

THE COURT: And you said number five?

THE WITNESS: After everything, after the lineup and I viewed the people carefully.

THE COURT: You said it is number five. I would like them to say a sentence?

THE WITNESS: I said it was number five but I said I want to be sure. I want them to

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say what the guy said to me.

THE COURT: That is what you told the officers?

THE WITNESS: Yes.

Q You said to the officer you wanted to be sure?

A Yes.

Q Did that mean you weren't sure that it was number five or somebody else you wanted to --

MS. FREUND: Objection.

THE COURT: Sustained.

Q You told the police you wanted to be sure; is that right?

Q Did you have some question in your mind about number five?

MS. FREUND: Objection.

THE COURT: Sustained. That goes to the weight, not the Wade issue.

MR. SEGAL: Very well, Judge.

Q You told them that you wanted to be sure; is that right and you wanted them to say a sentence?

A Yes.

Q Now, each man came up to the window and said a sentence; is that what happened?

A Yes.

Q And then you said to the police something; is

1 [REDACTED] - People - Cross

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2 that right?

3 A Did I say something?

4 Q Withdraw that.

5 Let me ask you this way, each man walks up to the
6 mirror?

7 A Uh-huh.

8 Q To the window and do they say, in what type
9 of voice, soft voice, loud voice, what type voice?

10 A A normal.

11 Q A normal voice?

12 A Yes.

13 Q Did you at any time every say to the police
14 I'd like to see the man's teeth, his mouth, tell them
15 to open up his mouth?

16 A No.

17 Q Did you remember anything about the man's mouth
18 who did this to you?

19 A I remembered he had the moustache?

20 Q Do you remember anything about his teeth?

21 A No.

22 Q About having bad teeth or his teeth were jagged
23 or anything like that?

24 A No.

25 Q Nothing at all like that?

[REDACTED] - People - Cross

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1
2 A Nothing at all.

3 Q Each one of the men comes up to the mirror and
4 they all say something; is that right?

5 A Uh-huh.

6 Q What happens after number six says something?

7 A I look back into the mirror.

8 Q And did you say anything to the police or did they
9 say something to you?

10 A They didn't say anything to me. I looked back
11 at the people again for maybe a half minute.

12 Q Okay.

13 A Then I say I say I'm sure that it is number five.

14 Q Is that before number five came up the second time
15 or is that after number five?.

16 A After number five. Then after number six.

17 THE COURT: Didn't there come a time when
18 you said number five spoke too low and you wanted
19 number five to repeat?

20 THE WITNESS: To say it where I could hear
21 him.

22 THE COURT: Just relax. We want to get the
23 sequence of events.

24 What Mr. Segal is asking you is what I asked
25 you before, you picked out number five, told the

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officer you weren't sure. You wanted them to repeat a sentence; correct?

THE WITNESS: Yes.

THE COURT: And then the officer went inside, whispered something to another officer?

THE WITNESS: Went outside.

THE COURT: You don't know what happened. Then the men came up one at a time?

THE WITNESS: Yes.

THE COURT: Number one, two, three, four, five and number six?

THE WITNESS: Yes.

THE COURT: Did there then come a time when you said I didn't hear number five. I want to hear it again?

THE WITNESS: I say could you ask him to speak a little louder because I can't hear him.

THE COURT: Did you say him or did you say all of them or just number five?

Did you say them or just number five?

THE WITNESS: I couldn't hear them.

THE COURT: So they then repeated it?

THE WITNESS: Yes.

THE COURT: All six of them came back up to

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the window?

THE WITNESS: Yes.

Q Didn't you say earlier when the Judge asked you those questions all six came up to the window?

A Yes.

Q And you said you couldn't hear number five?

A Uh-huh.

Q Then the police told number five --

A Speak a little louder.

Q To speak louder?

A Yes.

Q So number five came back up to the window?

A He didn't come back up to the window.

THE COURT: He said it twice while he was at the window?

THE WITNESS: Yes. He didn't come back to the window.

Q So number five at the window said it twice?

A Yes.

Q In other words, number one said it once?

A Everyone said it once.

Q Wait a minute. Number one came up to the window and he only said it once; is that correct?

A Only once.

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2 Q Number two said it how many times?

3 A Once.

4 Q Number three?

5 A Like I'm saying everybody said it. Where I couldn't
6 hear them when he got to the window seemed like he lowered
7 his voice that he didn't want me to hear it.

8 THE COURT: So you told the officer you couldn't
9 hear number five?

10 THE WITNESS: Yes.

11 THE COURT: And number five repeated it?

12 THE WITNESS: Yes.

13 THE COURT: And then he went back sat down?

14 THE WITNESS: Yes.

15 THE COURT: Then number six came up?

16 THE WITNESS: Yes.

17 THE COURT: And number six sat down?

18 THE WITNESS: Yes.

19 THE COURT: Everybody said it once except
20 number five who said it twice?

21 THE WITNESS: Yes.

22 Q That was it after that?

23 A That was it. I went, left the room.

24 Q You went out of the room at that time?

25 A Yes.

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order.

THE COURT: Fine.

MR. SEGAL: I call Oscar Goldman to the witness stand.

O S C A R G O L D M A N, called as a witness on behalf of the defendant, having first been duly sworn, testified as follows:

COURT OFFICER: The witness gives his name as Oscar G-o-l-d-m-a-n, resident of Bronx County.

Please keep you voice loud and clear.

THE COURT: All right, Mr. Segal.

DIRECT EXAMINATION

BY MR. SEGAL:

Q Mr. Goldman let me show what is marked People's Exhibit 5 which is in evidence and ask you do you recognize that picture?

A Yes.

Q What do you recognize it as?

A It is a lineup.

Q Are you in the that picture?

A Yes.

Q What number are you?

A Number one.

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Q What I will ask you to do now is can you tell us, do you remember any of the facts that took place on the day that you had that lineup?

A Well, it has been a long time because -- but I can remember that we was in the lineup and whoever the witness was wanted us to come up to the window.

THE COURT: You don't that. Did some officer tell you to go up to the window?

THE WITNESS: Yes.

THE COURT: You don't know if the witness wanted it?

THE WITNESS: Usually --

THE COURT: Don't tell me usually. The officer said something to you.

THE WITNESS: The officer told us one by one come up to the window and repeat something.

Q And did you do that?

A Yes.

Q Do you remember what the officer asked you to repeat?

A Something in the areas, I'm going to do something to you so you cannot identify me, bitch.

THE COURT: "I'll fix you so you don't identify me, you bitch," something like that?

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THE WITNESS: Something to that effect.

Q Now, Mr. Goldman, on that date did the police ask you to go in number one, two, three, four, five, six through the numbers each one number one to come up then number two, three, four and so on?

A Yes.

Q After you said it does number two go?

A Yes. Went in sequence.

Q After six went what happened?

A I can't remember.

Q Do you remember if you did it a second time.?

A No I can't remember.

Q Do you remember if the police asked anyone in the lineup to come up separately up to the window and say it?

A Do you mean just pick out a random number?

Q Yes, say like a number three come up do it?

A I can't remember.

Q Or number four or number five?

THE COURT: To the best of your recollection you each went up once and repeated this sentence?

THE WITNESS: Yes.

THE COURT: And then went back and sat

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down?

THE WITNESS: Yes.

THE COURT: Do you remember if anyone repeated the sentence twice?

THE WITNESS: It is possible but I don't remember.

THE COURT: To the best of your recollection you each said it once?

THE WITNESS: Right.

Q Can you tell us what kind of voice you said it in? Did the police tell you to say it in any type of voice?

A Said like in a low voice.

THE COURT: A slow voice or low voice?

THE WITNESS: Deep voice.

THE COURT: Deep voice or low voice?

THE WITNESS: Like say it in mean tone.

Q Is that what they told you?

A Before you came up to the window did the police ask anything of the six of you to come up to the window separately at any time?

A Not to my knowledge.

Q Did they have you sitting down -- withdrawn. Had you ever been in lineups before?

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A Yes, plenty of them.

Q Did the police tell you to take a number and put it on your chest?

A Held them down.

Q Down by the legs?

A Yes.

Q Do you know when the shade goes up.

A Can I interrupt?

Q Yes.

A Yes.

Q When the shade went up here did the police ask each man to stand, turn left and right or just tell you to sit where you were?

A Well, first we was sitting. Then they requested we each come up to the window by one side, or something to that effect and say the words.

Q That was the only time you ever got up or did you get up any other time?

A That is the only time I remember.

Q After you got up?

A Yes.

Q By the way after the lineup was over did you hear anybody in the precinct yelling or screaming or anything like that?

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number five?

MS. FREUND: Objection.

THE COURT: Overruled.

Do you remember that?

THE WITNESS: No.

Q You don't?

A No, I can't remember.

Q Do you remember any female police officer coming into the room and saying anybody -- to anybody in the room --

A I can't even remember it was a police woman or a man.

Q Did a man come in and say anything?

MS. FREUND: Objection asked and answered.

THE COURT: Says he doesn't remember. There was a police officer in the lineup room with you?

THE WITNESS: Yes, there's always be a police officer.

MR. SEGAL: Nothing further.

THE COURT: Any cross examination?

MS. FREUND: No, nothing.

THE COURT: All right Mr. Goldman you're excused. Thank you very much for coming in.

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(Witness excused.)

THE COURT: Do you have another witness.

MR. SEGAL: David Doe, Judge.

D A V I D D O E, called as a witness on behalf of
the Defendant, having first been duly sworn, testified
as follows:

COURT OFFICER: Witness gives his name
as David D-o-e, resident of Bronx County.

THE COURT: All right, Mr. Segal.

DIRECT EXAMINATION

BY MR. SEGAL:

Q Mr. Doe, do you remember being in a lineup
sometime in June of 1984?

A Yes.

Q Do you remember where that lineup was?

A 48th Precinct.

Q Do you go there a lot for lineups?

A Yes.

Q Let me show you a picture that is People's
5 in evidence and ask you do you recognize the picture?

A Yes.

Q What do you recognize it as?

A Lineup.

Q Are you in that picture?

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1
2 A Yes.

3 Q What number are you?

4 A Six.

5 Q Do you remember the day that the lineup took
6 place?

7 THE COURT: Excuse me, Mr. Goldman is
8 here. Does it matter?

9 MR. SEGAL: Can he stay?

10 THE COURT: All right.

11 Q Do you remember any of the facts about the
12 lineup, how it happened, what took place anything like
13 that?

14 A They told us to come to the window and say,
15 "Give me your money, you bitch."

16 Q Let me start from the beginning. There came
17 a time when the police came, got you to be a standing
18 in a lineup; right?

19 A Yes.

20 Q They bring you to the 48th Precinct?

21 A Yes.

22 Q And when they get you into the room what happens?
23 What do the police say to you when they get you into
24 the lineup at that time in June?

25 A Told us to come to the window one at a time.

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THE COURT: First did you sit down at the chairs?

THE WITNESS: Yes.

THE COURT: And you held your number?

THE WITNESS: Yes.

THE COURT: And you saw the shades go up?

THE WITNESS: Yes.

THE COURT: Did anything happen after the shade went up?

THE WITNESS: Yes. Then the officer came in tells us to come one by one to the window and call out some names.

Q Did you do that?

A Yes.

Q You were sitting next to number five?

A Yes.

Q You remember number five at any time being told to walk up to the window by himself?

A No.

Q Do you remember number four being told to do it?

A No.

Q How about number three?

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A No.

3

Q Or two?

4

A No.

5

Q What about number one?

6

A No.

7

Q Do you remember anyone at anytime being told

8

-- withdraw that.

9

When they told you to come and make the statement
did you do it number one first and then number two,
three, four, five?

11

12

A One by one.

13

Q One by one?

14

A (Witness nodding head.)

15

Q After you finished making the statement what
happened next?

16

17

A They just told us to go home.

18

Q Do you remember any police officers coming
in and saying I want it again?

19

20

A They did it around two times.

21

Q Do you remember it two times?

22

A (Witness nodding head.)

23

Q And do you remember walking up to the window
two times?

24

25

A Yes.

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THE COURT: All six of you walked up to the window two times; is that correct?

THE WITNESS: Yes.

THE COURT: But you don't recall any one of you going up alone out of order?

THE WITNESS: No.

Q You're sure of that as you sit here?

A Yes.

Q Do you remember at any time a police officer coming in the room whether it be a man or woman and saying to the six of you you can all go home but number three or number four whatever number, one of you has to stay?

A They just kept the prisoner.

Q Did you know who that was?

A No.

THE COURT: One of you was identified. Do you remember that?

THE WITNESS: No.

THE COURT: You don't remember that?

THE WITNESS: No.

Q Do you remember anyone, one of the six being told to walk up to the window and open their mouth and show their teeth?

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A Yes.

3

Q Who do you remember being told that?

4

A All of us.

5

Q All of you?

6

A Yes.

7

Q Do you remember one being told alone to go
up and do it?

9

A No.

10

Q Are you sure of that?

11

A Might have been one time.

12

Q Are you sure? We wanted to know that that
is why we're asking.

14

Are you sure? What you're saying was it one person,
two people or whatever went up by themselves?

16

A I think it was two.

17

Q Do you remember any police officer -- withdrawn.

18

Did a police officer tell you to say those words,
bitch, about the money and all that?

20

A Yes.

21

Q Do you remember if it was a man or woman?

22

A Man.

23

Q Did you know that police officer from before?

24

A No.

25

Q You have in other lineups; haven't you?

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A Yes.

Q Do you remember this lineup for any special reasons?

A Yes, it was different.

THE COURT: What was different about this lineup?

THE WITNESS: They told us to come up to the window.

Q And repeat that sentence?

A Yes.

MR. SEGAL: Nothing further.

THE COURT: Any cross examination?

MR. SEGAL: One other.

Q You don't remember anyone being told definitely to come up to that window and say anything?

A One by one.

Q It was all one by one?

A Yes.

Q Never one person and the rest of you sit back?

A Yes, one person, and all of us be sitting down.

THE COURT: Then he would go back and the next one would go up?

THE WITNESS: Yes.

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MR. SEGAL: Nothing further.

THE COURT: Okay Mr. Doe. You're excused.

Any others?

MR. SEGAL: Could he just take the stand again?

(Whereupon the witness, David Doe, resumed the witness stand.)

CONTINUED DIRECT EXAMINATION

BY MR. SEGAL:

Q Before you came here today, Mr. Doe, did you speak to any police officer?

A No.

Q Did you speak to the District Attorney?

A No.

Q Did anybody tell you what to say before you took this witness stand?

A No.

Q Anybody tell you anything about what you had to do here today?

A Just told me I had to come testify.

Q That was it?

A Yes.

MR. SEGAL: Nothing further.

THE COURT: Anybody else?

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MR. SEGAL: That is all I have right now, Judge.

THE COURT: Any possibility of our getting that other witness this afternoon?

MS. FREUND: I am hoping there is that possibility, your Honor. I'm not waiting to hear from the detective.

THE COURT: If not I suggest we start jury selection.

MR. SEGAL: I will put the defendant on.

THE COURT: Okay.

The Court is recessed until two o'clock.

(Whereupon the Court took the luncheon recess until 2:00 p.m.)

AFTERNOON SESSION

COURT CLERK: Continued Wade Hearing. People of the State of New York versus Alan Newton. Please note on the record the presence in the courtroom of counsel for the People, defense counsel and the defendant.

THE COURT: I understand the People's other witness is not now available. Is that correct?